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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/536,970	02/01/2006	Ian Anderson	6.70.1071 PCT/TB-US (LBT1)	1324
7590 Levy & Grandinetti P.O. Box 18385 Washington, DC 20036-8385				
EXAMINER				
HARMON, CHRISTOPHER R				
ART UNIT		PAPER NUMBER		
3721				
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08/03/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/536,970

Applicant(s)

ANDERSON ET AL.

Examiner

Christopher R. Harmon

Art Unit

3721

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 July 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Christopher R Harmon/
Primary Examiner, Art Unit 3721

Continuation of 11, does NOT place the application in condition for allowance because: The Final Rejection of 4/24/9 was necessitated by the claim amendments submitted 2/23/09 and is maintained. Note Brown discloses a C-fold configuration that reads on the second and third folds as claimed. The first perpendicular fold is not shown, however one of ordinary skill in the art could easily perform a first perpendicular fold in order to lessen the material width and depth of insertion as asserted in the Final Rejection paragraph 3. Note that a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond that person's skill. While evaluating obviousness, one must ask whether the improvement is more than the predictable use of prior-art elements according to their established functions; see *KSR Int. v. Teleflex 550 US* (2007).

To determine whether there was an apparent reason to combine the known elements in the way a patent claims, it will often be necessary to look to interrelated teachings of multiple patents; to the effects of demands known to the design community or present in the marketplace; and to the background knowledge possessed by a person having ordinary skill in the art; *ibid*.

The analysis need not seek out precise teachings directed to the challenged claimed specific subject matter, for a court can consider the inferences and creative steps a person of ordinary skill in the art would employ. Under the correct analysis, any need or problem known in the field and addressed by the patent can provide a reason for combining the elements in the manner claimed; *ibid*. The addition of a perpendicular folding process does not impart novelty to the claimed process. One of ordinary skill could easily perform the additional folding process for the predictable outcome during insertion. Regarding the overlapping panels - the C-folded configuration provides overlapping panels as claimed. Note that during patent examination, the pending claims must be interpreted as broadly as their terms reasonably allow. *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 320,322 (Fed. Cir. 1999). In determining the patentability of claims, the PTO gives claim language its broadest reasonable interpretation" consistent with the specification and claims. *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997). See MPEP § 904.1. Limitations not appearing in the claims cannot be relied upon for patentability; *In re Self*, 671 F.2d 1344, 1348 (CCPA 1982). Particular embodiments appearing in the written description are not to be read into the claims if the claim language is broader than the embodiment; see *Superguide Corp. v. DirecTV Enterprises, Inc.*, 358 F.3d 870, 875 (Fed.Cir. 2004). Krueger teaches drawing folded portions of a bag placed inside a box outwardly to the interior surfaces via a vacuum application. It would have been obvious to modify the teachings of Brown to include this known vacuum process for expanding the bag inside the container. One of ordinary skill in the art could easily apply the teachings of Krueger to the invention to Brown for creating an expanded bag inside the container for further packaging use.